

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 886 OF 2006

IN

DRAFT NOTICE OF MOTION NO. OF 2006

IN

SUIT (LODG.) NO. 2409 OF 2006

Devji Shamji Patel & Anr.. Appellants.

Versus

Paras Associates & others..... Respondents.

Dr. Virendra Tulzapurkar, Senior Counsel, with
with Mr.R. D. Soni i/by M/s. Ram & Co.,
for the Appellants.

Mr. D. D Madon with Mr. Sanjay Jain and
Mr.Balkrishna Joshi for the Respondents.

**CORAM : R. M. LODHA, and
S. A. BOBDE, JJ.**

DATED : 11TH DECEMBER, 2006.

P.C.:

The ad-interim order dated 21st September, 2006,
whereby the learned motion Judge directed the parties
to maintain status quo, is under challenge at the
instance of defendant nos.1 and 2.

2. Dr. Virendra Tulzapurkar, Senior Counsel for the appellants, submitted that even if it be assumed that there was an oral agreement for sale of the subject property by the appellants to the respondent no.1 for a consideration of Rs.51,00,000/-, the material does not indicate that the respondent no.1 had been ready and willing to perform its part of contract. In this connection, he invited our attention to the notice dated 16th November, 2005 sent by the respondents to the appellants. Dr. Tulzapurkar also invited our attention to the suit filed by the present respondents before the City Civil Court at Bombay and the stand set up therein.

3. Since the appeal is from the ad-interim order, we do not intend to go into the matter at length, but suffice it to say that the submission of Dr. Tulzapurkar cannot be accepted at this stage in view of the fact, and that is admitted by Dr. Tulzapurkar, that there is no specific denial to the averments made in paragraph 5 of the plaint. In paragraph 5 of the plaint the plaintiffs (respondents) averred thus:

"5. Pursuant to negotiations between plaintiffs no.2 to 8 and defendant no.1 prior to 18th

February, 2004, it was agreed between plaintiffs no.2 to 8 and the defendants that :-

(i) Plaintiffs no.2 to 8 and the defendants will join as partners and constitute a partnership firm i.e. plaintiff no.1;

(ii) Plaintiffs no.2 to 8 will be entitled to 2/3rd share in the assets and profits of plaintiff no.1 and the defendants will be entitled to 1/3rd share in the profits and assets of plaintiff no.1;

(iii) Defendant no.1 will transfer the suit property into plaintiff no.1 firm at and for the consideration of Rs.51,00,000/-;

(iv) The plaintiff no.1 will acquire and develop the suit property (hereinafter referred to as "the Suit Contract").

4. It is not in dispute that on 18th February, 2004 itself the partnership agreement was entered into between the appellant no.1 and the respondent nos.2 to 8. Apparently, the partnership agreement was entered

into on 18th February, 2004 after the afore noticed oral agreement was entered into between the parties, since in the partnership agreement the subject property is shown as the place of business. There is also no dispute that the appellant no.1 (defendant no.1) had signed various agreements relating to purchase of T.D.R. with third parties as partner of the 1st respondent firm. At this stage, therefore, it appears that the appellant no.1 (defendant no.1) had also acted pursuant to the agreement for transfer of the suit property by him to respondent no.1 (plaintiff no.1 firm). From the oral agreement it appears that the appellant no.1 agreed to sell the subject property to respondent no.1 (plaintiff no.1 firm) for a consideration of Rs.51,00,000/-. That a sum of Rs.14,00,000/- was received by the appellant no.1 is not in dispute. However, the explanation of the appellant no.1 is that the sum of Rs.14,00,000/- was received pursuant to finance arrangement between the parties. The material on record does not support the stand of the appellants.

5. In the plaint the specific averment has been made by the plaintiffs in paragraph 31 that the plaintiffs have always been ready and willing to perform their

obligations under the suit contract by making payment of amount of Rs.37,00,000/- to defendant no.1. At this stage, therefore, based on the notice dated 16th November, 2005, it cannot be inferred that the respondent no.1 (plaintiff no.1) has not been ready and willing to pay to defendant no.1 (appellant no.1) the remaining consideration of Rs.37,00,000/-.

6. All in all the ad-interim order does not call for any interference.

7. Appeal is dismissed in limine.

8. The reasons indicated by us are only for the purpose of consideration of this appeal and shall not influence the final order that may be passed by the motion Judge at the hearing of the notice of motion.

9. Looking to the controversy involved, we request the learned motion Judge to hear and decide the notice of motion expeditiously.

Sd/-

(R. M. LODHA, J.)

Sd/-

(S. A. BOBDE, J.)